

IN THE CHANCERY COURT FOR SHELBY COUNTY, TENNESSEE
THIRTIETH JUDICIAL DISTRICT AT MEMPHIS

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR., ATTORNEY)
GENERAL and REPORTER,)

Plaintiff,)

v.)

JURY DEMAND

No. CH-08-1979-1

BLUEHIPPO FUNDING, LLC, a Maryland)
corporation, BLUEHIPPO CAPITAL, LLC,)
VIRGINIA, a Virginia corporation,)
BLUEHIPPO CAPITAL LLC, NEVADA,)
a Nevada corporation, d/b/a BLUEHIPPO,)
DIGITAL BOULEVARD, www.bluehippo.com,)
www.bigbluead.com, and www.approvalpc.com,)

Defendants.)

STATE OF TENNESSEE'S MOTION FOR TEMPORARY INJUNCTION
AND ASSET FREEZE

The State of Tennessee ("State"), through its Attorney General and Reporter, Robert E. Cooper, Jr., and on behalf of and at the request of the Division of Consumer Affairs of the Department of Commerce and Insurance, moves this Court pursuant to Tenn. Code Ann. § 47-18-108(a) of the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 *et seq.*, for a statutory injunction temporarily enjoining Defendants BlueHippo Funding, LLC, and BlueHippo Capital, LLC, their officers, directors, employees, agents, successors and assigns, and other persons in active concert or participation with BlueHippo Funding, LLC and BlueHippo Capital, LLC who receive actual notice of this temporary injunction, from engaging, directly or indirectly, in any acts which are unlawful, unfair or deceptive to consumers as prohibited or required below.

DEFINITIONS

For purposes of this Temporary Injunction Motion, the following terms are defined as:

“Clearly and conspicuously” or “clear and conspicuous”	shall mean a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, physical or temporal location or volume (if applicable), compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. If a statement modifies, explains, or clarifies other information with which it is presented, that statement may not contradict or be inconsistent with any other information with which it is presented. If a statement is necessary to prevent other presented in proximity to that other information, in a manner that is readily noticeable, readable, and understandable, and it must not be obscured in any manner. For purposes of this Motion, “clearly and conspicuously” or “clear and conspicuous” does not mean a disclosure that is made after the consumer has completed a purchase or told that the consumer has completed a purchase.
“Deceptive” or “Deception”	shall mean causing or tending to cause a consumer to believe what is false or misleading or tending to mislead a consumer as to a matter of fact.
“Initial offer”	shall mean the first contact with a consumer or person, whether verbally or in writing.
“Material term”	shall mean any claim involving purpose, efficacy, cost, durability, performance, warranties, quality, the date the consumer expects to receive the product, or any other areas with which the reasonable consumer would be concerned.
“Prize” or “prizes”	shall mean any prize, gift, award, incentive promotion or any thing of value. “Prize” includes, but is not limited to, any thing of value offered in a sweepstakes, contest, drawing, incentive offer, premium promotion or similar promotional offer by whatever name the company uses.
“Unfair” or “Unfairness”	shall mean causing substantial injury to consumers which is not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition.

INJUNCTIVE RELIEF

Defendants BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada, their officers, directors, employees, agents, successors and assigns, and any other person or entity in active concert or participation with BlueHippo Funding, LLC, BlueHippo Capital, LLC, Virginia, and BlueHippo Capital, LLC, Nevada, who receive actual notice of this temporary injunction, are prohibited from engaging, directly or indirectly, in the following:

- (1) Within **thirty days** of entry of any temporary injunction order, running, airing, publishing, posting or otherwise making available to consumers any advertisement or other initial offer that includes a prize, including but not limited to, a camera, a printer, a television, a software package, which is accessible to consumers in Tennessee that does not clearly and conspicuously disclose the following information:
 - (a) the name and street address of the person making the offer;
 - (b) the approximate verifiable retail price of each prize or product offered for sale through the promotional program in a position immediately adjacent to the item when the initial offer is in writing;
 - (c) the approximate verifiable retail price of each prize or product offered for sale through the promotional program when the initial offer is verbal;
 - (d) a general description of the types and categories of restrictions, qualifications, or other conditions, that must be satisfied before the consumer or person is entitled to receive or use the prize or product offered;
 - (e) an approximate total of all costs, fees, or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or product;
 - (f) the specific model of the prize, good, or product offered;

- (g) the date or approximate date that the consumer stands to receive the prize or product; and
- (h) whether the prize only applies with offers for certain product models.

In the alternative, the Defendants may expressly state in any advertisement running after thirty days from entry of any temporary injunction order that the Defendants' offer is void or does not apply in Tennessee.

(2) **Upon entry** of any temporary injunction order, accepting, collecting, cashing, transferring or otherwise processing any order or monies from any order from any consumer with a billing address in Tennessee received by the Defendants at any time in the past, present, or future when the Defendants ran, aired, published, posted, or otherwise made available to consumers with billing addresses in Tennessee, advertisements or other initial offers that do or did not contain a clear and conspicuous disclosure of any one of the following:

- (a) the name and street address of the person making the offer;
- (b) the approximate verifiable retail price of each prize or product offered for sale through the promotional program in a position immediately adjacent to the item when the initial offer is in writing;
- (c) the approximate verifiable retail price of each prize or product offered for sale through the promotional program when the initial offer is verbal;
- (d) a general description of the types and categories of restrictions, qualifications, or other conditions, that must be satisfied before the consumer or person is entitled to receive or use the prize or product offered;
- (e) an approximate total of all costs, fees, or other monetary obligations that must be satisfied before the consumer or person is entitled to receive or use the prize or product;
- (f) the specific model of the prize, good, or product offered;

- (g) the date or approximate date that the consumer stands to receive the prize or product; and
 - (h) whether the prize only applies with offers for certain product models.
- (3) Representing, either expressly or implicitly, that a “free” item would apply to any order for any product, when this is not the case.
- (4) Representing, either expressly or implicitly, that an item is “free,” but charging consumers for shipping on such an item.
- (5) Representing, either directly or indirectly, that contracts or purported contracts have consistent terms, when this is not the case.
- (6) Representing, either directly or indirectly, that certain documents are required to be signed or otherwise agreed to, when this is not the case.
- (7) Stating that a consumer’s product will not be shipped until the Defendants received the consumer’s signed financing agreement, when this is not the case.
- (8) Urging consumers to return “paperwork,” “welcome packages,” “welcome kits” or terms or phrases of similar import without clearly and conspicuously disclosing the name of each document that is not required to be signed or otherwise agreed to under the terms of a given offer and a statement that that document is not required to be signed or otherwise agreed to under the terms of the Defendants’ offer.
- (9) Failing to clearly and conspicuously disclose the material terms of any offer when that offer is referenced or described in any advertisement, sales script, or other communication to a consumer.
- (10) Using sweeping claims that imply or expressly state that the Defendants’ offer is not subject to other restrictions, when this is not the case, including, but not limited to, use of the following:
 - (a) There’s no catch and no strings attached;
 - (b) It’s that simple . . . ;
 - (c) All you have to do is . . . ; and
 - (d) All we ask is . . .

or terms or phrases of similar import.

- (11) Failing to clearly and conspicuously disclose the Defendants’ refund,

no-refund policy, or any limitations on the Defendants' refund policy.

- (12) Employing a no refund, limited refund, or store-credit only refund policy without clearly and conspicuously disclosing all material terms of the transaction.
- (13) Representing, either expressly or implicitly, that many different types of products are available for purchase using store credit, when this is not the case.
- (14) Failing to clearly and conspicuously disclose that an activation payment is non-refundable if that is the case.
- (15) Representing consumers will forfeit a particular fee upon canceling their order, when that fee does not include the forfeiture of the consumer's activation payment.
- (16) Misrepresenting the specific date or general time frame that the consumer stands to receive any product or "free" merchandise that a consumer orders.
- (17) Using a seasonal or temporal theme that implies or expressly states that the consumer will receive the product or "free" merchandise during a relevant time in that season or time, when this is not the case, including, but not limited to:
 - (a) 'Tis the season for no credit check; and
 - (b) Perfect for Back to School.
- (18) Using the following terms or phrases that implicitly or expressly state that the consumer will receive the product or "free" merchandise they ordered immediately or shortly after placing their order, when this is not the case:
 - (a) And we say you CAN get a brand new computer now, even with less than perfect credit;
 - (b) Get Yours Now;
 - (c) Get Yours Now the Easy BlueHippo Way!;
 - (d) Get your new computer today;
 - (e) Get Your New Computer Now!;

- (f) Get your brand new, computer now . . .;
- (g) Call today and receive your new computer;
- (h) So get your new computer today;
- (i) So call today and get your laptop;
- (j) Didn't Get a New Computer for the Holidays? Get one Now Without a Credit Check!;
- (k) Call BlueHippo today and tell us where you want new laptop delivered;
- (l) Call today and get your brand new computer . . .;
- (m) Call 1-800-600-0998 and your brand new, name brand state-of-the-art PC will be on its way to your house . . . guaranteed;
- (n) Before you know it, your brand new laptop will be for you at your doorstep;
- (o) Call today for your brand-new computer and before you know it a new PC will be delivered right to your door;
- (p) So grab your checkbook and call BlueHippo today and your brand-new, brand-name computer will be on its way to your house;
- (q) Call today for your family's brand new computer and a new PC will be delivered right to your door;
- (r) Call BlueHippo today and before you know it, a brand-new PC will be delivered right to your door;
- (s) Soon you'll be cruisin' the Internet in style with your brand new computer;
- (t) Call now to get the computer you need regardless of your credit, plus two free gifts with order;
- (u) How long does it take to receive my computer? After you have made your pre-paid installments, establishing credit with us, we immediately process

your order and ship your computer. Your brand new computer should arrive within 10 days, fully installed with Microsoft and Internet software;

- (v) Call 1-800-591-4708 to get your new PC. Instant application;

or using terms or phrases of similar import.

- (19) Misrepresenting, either directly or indirectly, the source of products or "free" merchandise, including but not limited to, making the following statements:

- (a) A brand new computer is waiting for you;
- (b) BlueHippo will deliver a new, Internet-ready PC to your door;
- (c) We'll send a brand new PC, fully loaded with everything you need;
- (d) We have thousands of high speed laptops that we're sending to people like you without a credit check;
- (e) We can't complete the purchasing, production, testing and shipping phase of your layaway purchase until we receive these forms;
- (f) Then we finance order and ship your computer directly to your home;

or term or phrase of similar import, when this is not the case.

- (20) Making any statement that the Defendants perform "no credit checks," or using any other term or phrase of similar import, when this is not the case, or is made at a time when any of the Defendants' purported contractual documents or verbal agreements purportedly allow the Defendants to check a consumer's credit score, report, or rating. If the Defendants' claim as to no credit checks or term or phrase of similar import would be valid as to one of the Defendants' offers, but not all of Defendants' offers, the Defendants are prohibited from stating "no credit checks" without clearly and conspicuously disclosing that that claim does not apply to the offer to which the claim does not apply.

- (21) Making any statement that consumers are "guaranteed to be approved," or using a term or phrase of similar import, when this is

not the case, or is made at a time when any of the Defendants' contractual documents or verbal agreements allow the Defendants or agents of the Defendants to exercise their discretion in approving consumers for any offer. If the Defendants' claim as to guaranteed approval would be valid as to one of the Defendants' offers, but not all of Defendants' offers, the Defendants are prohibited from stating "guaranteed approval" or using a term or phrase of similar import without clearly and conspicuously disclosing that that claim does not apply to an offer to which the claim does not apply.

- (22) Representing that all that is needed for approval is a "home phone and a checking account" or any other qualification, when the qualification does not include all of the pieces of information or other requirements needed for approval, including, but not limited to employment information, social security information, and driver's license information.
- (23) Using a forum selection or choice of law clause that restricts jurisdiction or venue to a forum outside Tennessee or requiring the application of the laws of another state with respect to any claim arising under or relating to the Tennessee Consumer Protection Act.
- (24) Representing that a consumer stands to receive a rebate as applied to a specific purchase, when this is not the case.
- (25) Representing that a consumer stands to receive their rebate immediately or shortly after placement of an order, when this is not the case.
- (26) Misrepresenting and/or failing to disclose material terms of their rebate program including, under the Defendants' present contractual documents that any violation of the agreement no matter how nominal or technical can subject the consumer to losing their rebate.
- (27) Debiting consumer bank or checking accounts or otherwise billing consumers in a manner that is inconsistent with any purported verbal agreement or contractual document.
- (28) Advertising, expressly or by implication, that a specific product is being offered for sale and failing to deliver the product in the time set forth in the Defendants' materials, including advertisements, contracts, sales scripts, or other forms made available to the consumer.
- (29) Using or making a statement or representation in the main, primary or

emphasized portion of the text of a solicitation, promotion, advertisement or other offering that is contradicted in a disclosure that is not easily read, readily noticeable or presented in small or fine print.

- (30) Failing to clearly and conspicuously disclose the general time frame that the consumer stands to receive or be shipped the product or free merchandise included in that offer.
- (31) Representing, expressly or by implicitly, that a specific product is being offered for sale but delivering a different product.
- (32) Advertising, expressly or by implicitly, that the Defendants offer a "layaway" plan when they do not designate, reserve or otherwise cause merchandise to be set aside by others *at the time an order is completed*. If the Defendants cause merchandise to be set aside by third parties at the time an order is completed, the Defendants must clearly and conspicuously disclose this fact to consumer prior to the point of purchase.
- (33) Failing to disclose all material terms of the layaway plan in their advertisements, sales scripts, and/or sales calls.
- (34) Failing to deliver the product after obtaining the required number of payments as agreed to by the parties.
- (35) Failing to deliver the prize or product offered in accordance with the rules, terms and conditions of the offer or promotional program as stated.
- (36) Continuing to debit consumer checking accounts after consumer has received reassurances either verbally or in written that their account has been canceled.
- (37) Requesting a consumer ask any questions prior to the recorded portion of the consumer's sales call when new terms are referenced in the recorded portion for the first time.
- (38) Selectively highlighting the more attractive term of one offer without specifying which offer the term applies to or without adequately disclosing the less attractive term contained in the other offer.
- (39) Using a default clause that purports to allow the Defendants to unilaterally raise a consumer's interest rate to the highest allowed by law or 24% APR, the acceleration of all amounts owed and other remedies for any violation of a consumer agreement, when

the consequences of Default are not clearly and conspicuously disclosed.

- (40) Using Spanish language disclosures that, when properly translated, misrepresent their offer.
- (41) Stating that the Defendants' transactions are secured by a Secure Sockets Layer (SSL) or to otherwise make specific references to web security when this is not the case.
- (42) Representing, either expressly or implicitly, that the Defendants are licensed or properly registered to lend money when this is not the case.
- (43) Engaging in any other unfair or deceptive practiced as defined above.

ASSET FREEZE

In order to preserve funds for consumer restitution and/or disgorgement of ill-gotten gains and in direct advancement of the State's police and regulatory power, civil law enforcement authority, and the purposes of the Tennessee Consumer Protection Act identified at Tenn. Code Ann. § 47-18-102, including allowing the State to provide for the protection of consumers and legitimate business enterprises from those who engage in unfair or deceptive acts or practices, the advancement of ethical standards of dealing between persons engaged in business, and the maintenance of the integrity of the marketplace in Tennessee as a whole, the State of Tennessee moves as follows:

- (1) Defendants BlueHippo Funding, LLC and BlueHippo Capital, LLC, shall be prohibited from liquidating, encumbering, borrowing against, withdrawing, transferring to another company or person or otherwise dissipating the sum of **\$2,571,601.80**. This sum shall be deposited in a registry account under the care, custody, and control of the Clerk and Master within **five calendar days** of any order being entered. Should the conclusion of the five day period land on a Saturday or Sunday or state or federal holiday, the Defendants shall make this deposit on the next business day that the Clerk and Master's office is open.

- (2) This sum shall be held *in custodia legis* by the Clerk and Master as described below. The account will be listed as "Monies Held For Potential Consumer Restitution Pursuant to Temporary Injunction Order in the *Case of State of Tennessee v. BlueHippo Funding, LLC, and BlueHippo Capital, LLC*."
- (3) The monies shall be placed in a registry account that will bear the highest interest rate.
- (4) The monies shall be held in a registry account of this Court until an Order by this Court expressly stating otherwise.

PRAYER FOR RELIEF

In support of this Motion, the State relies upon the contemporaneously filed Memorandum of Facts and Law in Support of Motion for Temporary Injunction, the Complaint, the Exhibits attached to this Motion, including attached exhibits 1-58 and prays as follows:

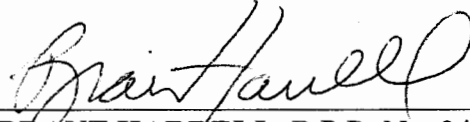
1. The State prays that a temporary injunction and asset freeze order consistent with the terms described above be entered and accompanied by findings of fact and conclusions of law.
2. The State prays that the Court finds that it has met its burden for a statutory temporary injunction and has demonstrated, based on the materials submitted and arguments of counsel, a substantial likelihood of ultimate success on the merits of its claims under the Tennessee Consumer Protection Act.
3. The State prays that the Defendants shall pay all court costs associated with this Temporary Injunction motion and that no costs shall be taxed to the State as provided by Tenn. Code Ann. § 47-18-108(a)(4).

**THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF FILED BY
THE PLAINTIFF IN THIS CASE.**

Respectfully submitted by:

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Attorney General and Reporter



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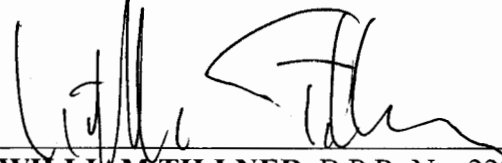
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